

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
)
IN THE MATTER OF: PROTEST)
)
BRANTLEY CONSTRUCTION, LLC)
)
CLEMSON UNIVERSITY)
)
SC HIGHWAY 93 PEDESTRIAN)
SAFETY IMPROVEMENTS)
STATE PROJECT NO. H12-9892-MJ)
_____)

BEFORE THE CHIEF PROCUREMENT
OFFICER FOR CONSTRUCTION

DECISION

CASE No. 2013-005

POSTING DATE:
DECEMBER 11, 2012

IT NOW APPEARING that the protestant, Brantley Construction Company, LLC, has withdrawn its protest of November 7th, 2012, this matter is hereby dismissed.ⁱ

IT IS SO ORDERED.


John St. C. White

Chief Procurement Officer for Construction

11 Dec 12
Date

Columbia, South Carolina

ⁱ See letter of withdrawal attached as Exhibit A.

EXHIBIT: A



Brantley
Construction
Company, LLC

DEC 11 2012

OFFICE OF STATE ENGINEER

December 10, 2012

Budget and Control Board
1201 Main St., Suite 600
Columbia, SC 29201

Attn. John St. C. White, P.E.

DEC 11 2012

Re: Case # 2013-005, Protest Clemson University – SC Highway 93 Pedestrian Safety Improvements

OFFICE OF STATE ENGINEER

Dear Mr. White:

Brantley Construction Company, LLC withdraws its protest of the award of the referenced project to Sossamon Construction.

We maintain that a good faith effort was made and respectfully disagree with SCDOT's evaluation of our bid on this project. In their "judgment", we did not make a good faith effort. Oddly, we cannot find any project where they awarded a contract based on a good faith effort. When asked what good faith efforts we would have had to accomplish (in addition to what we had already completed and submitted) in order to be found responsive, SCDOT, stated we should have listed SCDOT DBEs. Their response seems to imply there is never enough effort by the bidder to satisfy that a good faith effort has been made. To pursue the protest under these conditions appears, at best, to have a slim chance of a favorable ruling.

We have reviewed the federal guidelines for "Participation by disadvantaged business enterprises in DOT financial assistance programs" referenced in the specifications and feel the SCDOT is carrying their requirements to a higher level than what the federal guidelines dictate. The federal regulations suggest certain guidelines for good faith efforts but state these guidelines are not mandatory, nor exclusive or exhaustive.

This is a typical case of "the tail wagging the dog", meaning this Clemson University project is being dictated by SCDOT. Clemson University is mandated by SCDOT to award this project at a higher price. Our bid saves both Clemson University and South Carolina taxpayers \$187,000.

The specifications state "failure to provide all information required in the bid may result in the contract being awarded to the next lowest responsible bidder". Clearly, the State has the right to accept our bid, if they choose to do so; however this confirms our theory that no matter what we did the SCDOT is only going to accept a bid from someone that lists SCDOT certified DBEs. The specifications are misleading and should have stated "will" result in the contract being awarded to the next lowest bidder.

Nevertheless, we have withdrawn our protest and wish Clemson University best of luck on this project. Thank you for your time in this matter.

Sincerely,

Sidney A. Brantley, President

Cc: Tommi J. Jones, PE, LEED AP, Clemson University
Sid Bacchus, LPA Administration Engineer
Greg Peck, Director of Construction's Office
Yolanda Byrd, LPA Coordinator

John McEntire, Director, Clemson University
Leland Colvin, Director of Construction
Tim Lindberg, Director of Construction's Office
Gary Linn, DBE Office

8300 Dorchester Road • Charleston, S.C. 29418 • (843) 552-0150 • Fax (843) 552-9072
brantley@brantleyconstruction.com

Brantley Construction Company, LLC is a trade name of Brantley Construction Services, LLC